

From: Tavis Barr
To: Microsoft ATR
Date: 1/27/02 11:34pm
Subject: Microsoft Settlement

To Whom It May Concern:

Pursuant to the Tunney Act, I am writing to comment on the proposed settlement of the United States vs. Microsoft antitrust case.

I urge you to not accept the settlement that the Justice Department and Microsoft have proposed.

Microsoft has continually abused its control of bottleneck facilities -- resources that it currently monopolizes -- to gain monopolies in new markets. It has used its monopoly in the productivity suite market to help perpetuate a monopoly in the desktop operating systems market, and it is now attempting to use its monopoly in the operating systems market to create a monopoly in the web services market that has the potential to be even broader than the one it now enjoys.

A key in opening up these bottleneck facilities is to allow third parties -- both commercial and non-commercial -- to gain the ability to create alternatives for Microsoft products and thereby prevent Microsoft from stacking one monopoly on top of another. This would principally require opening up Microsoft's APIs, and providing a strong guarantee that third parties would not be subject to patent infringement lawsuits for writing programs that emulate these APIs.

The proposed settlement allows far too many loopholes to be seen as a serious remedy. First, because so many forms of communication between computers and their subsystems involve authentication, an exemption for not sharing security-related APIs could be interpreted broadly by Microsoft as a requirement to share very little. Second, the requirement is largely backward-looking: It does very little to require Microsoft to publish the APIs for the .NET middleware that it is currently using to develop a new monopoly in web services. Third, Microsoft can still use End-User License Agreements to prevent its own software from running with other people's implementations of its APIs. Finally, there is no protection from patent-infringement lawsuits for parties that attempt to duplicate implementations of these APIs, or even a requirement that Microsoft state which API implementations may be subject to patent-protection. The lack of such information means that Microsoft can threaten patent-infringement lawsuits to clients of its potential competitors without providing any specifics as to what the infringement is.

There are many more flaws in the proposed settlement, but I believe the

above are enough to generate serious reservations about adopting it. I
thank you for your time and attention.

Sincerely,
Tavis Barr

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